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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/687,157	10/12/2000	John J. Sie	19281-000800US	8624
20350	7590	02/10/2009	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834		NGUYEN, PHILLIP H		
		ART UNIT		PAPER NUMBER
		2191		
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		02/10/2009		PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/687,157	SIE ET AL.	
	Examiner	Art Unit	
	Phillip H. Nguyen	2191	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 12 November 2008.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,2,4,5,7,8,10-15,17,18 and 20-24 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,3-5,7,8,10-15,17,18 and 20-24 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

 1. Certified copies of the priority documents have been received.

 2. Certified copies of the priority documents have been received in Application No. _____.

 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

DETAILED ACTION

1. This action is in response to the amendment filed 11/12/2008.
2. Claims 1, 2, 4, 5, 7, 8, 10-15, 17, 18 and 20-24 remain pending in this application. No claims have been amended, added or canceled.

Response to Arguments

3. Applicant's arguments filed 11/12/2008 have been fully considered but they are not deemed persuasive.

Applicants argues,

- 1) Youden fails to store the content at the user location.
- 2) the disk array in Youden locates at the content distributor not at the user location.
- 3) the transmission in Youden does not occur until after the user specifically requests the content.
- 4) the user's location recited in the claims is user's STB (set-top box).

In response to Applicant's arguments,

- 1) Youden teaches "***Client node 30 may comprise an individual user's TV STB, any general purpose computer, or any other entity capable of requesting and receiving video data. Indeed, client node 30 could comprise another video server 10.*** References herein to "users" should be taken as synonymous to "client node"" (see col. 5:14-19).

The video server 10 of Youden located at the user's location comprises a plurality of disk arrays for storing the content. Thus, Youden teaches storing the content at the user location.

2) As explained above, disk arrays are located at the user location because the video server can be located at the user location.

3) Youden teaches "...*To minimize this program, the first five minutes of the two hundred most popular films can be pre-striped (i.e. pre-loaded) to one or more disk arrays. A request for one of these films would be serviced quickly with the pre-striped video data, while the remainder of the video data program is recalled from archival storage and transcribed to the disk array*" (see at least col. 10:52-54). According to Youden, subset of video data is pre-striped to the disk arrays before the user requests in order to improve the service time.

4) Claim 1 or other independent claims do not recite that user's location is STB (set-top box). Limitation from the specification can not be brought into the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 4, 5, 7, 8, 10-15, 17, 18, and 20-24 are rejected under 35

U.S.C. 102(b) as being anticipated by Youden et al. (USPN 5,606,359).

As per claims 1, 8, and 14

Youden teaches

receiving a command from the content distributor to store the content at the user location before a user specifically requests the content, wherein the content comprises a subset of content available from the content distributor, the subset associated with a premium subscription service, and wherein the content comprises at least one of a video program or an audio program; processing the command sent from a remote location with respect to the user location; receiving the content at the user location; storing the content at the user location in response to at least the processing the command (see at least col. 10:52-54 "*To minimize this problem, the first five minutes of the two hundred most popular films can be "pre-striped" to one or more disk arrays. A request for one of these films would be serviced quickly with the pre-striped video data, while the remainder of the video data program is recalled from archival storage and transcribed to the disk array*" – a subset of video from the distributor has been pre-striped (pre-stored) at the disk arrays); and

detecting a user action related to the content after storage of the content (see at least col. 10:36-37 "*a user, through his or her STB makes a request*

which is transmitted over one of the communication channels in distribution network 20").

As per claims 2 and 15:

Youden further teaches

wherein the content comprises at least one of a commercial, an infomercial, a show, or a movie (see at least col. 6:66 "*Data, usually MPEG video/audio data*").

As per claims 4 and 17:

Youden further teaches

wherein the user location comprises a set top box (see at least col. 5:15 "*Client node 30 may comprise an individual user's TV STB*").

As per claims 5 and 18:

Youden further teaches

wherein the storing the content comprises storing the content on a mass storage device associated with a set top box that is associated with the user location (see at least col. 10:52-54 "*To minimize this problem, the first five minutes of the two hundred most popular films can be "pre-striped" to one or more disk arrays. A request for one of these films would be serviced quickly with the pre-striped video data, while the remainder of the video data program is*

recalled from archival storage and transcribed to the disk array" – a subset of video from the distributor has been pre-striped (pre-stored) at the disk arrays).

As per claims 7, 10, and 20:

Youden further teaches

wherein the processing the command comprises determining usage rules related to the content (see at least col. 9:52-65 "Unfortunately, video data cannot simply be read at a faster rate and then sent through the distribution network to the user. This would create a data stream with illegal timing stamps that cannot be decoded by the user's STB. Reading the data faster and only sending a portion of it to the user also creates an illegal data stream. For FR, these methods also fail, as a movie compressed in the MPEG format cannot be played backwards. If any images could be recovered using these methods, the image would be of low quality and they would require real time processing of the video data as well as the cooperation of the user's STB. In the present invention, a separate FF and FR version of each film is created" – because the video data cannot be read at a faster rate, a separate version of FF and FR is created to save bandwidth, storage space, and produce a high quality set of FF and FR images).

As per claim 11:

Youden further teaches

sending usage rules for the subset of content to the user location (see at least col. 10:15-17 “*creating and storing FF and FR version of the films...*”).

As per claim 12:

Youden further teaches

wherein the subset of content is unmentioned in a linear schedule (*the pre-striped content is not mentioned in a schedule*).

As per claim 13:

Youden further teaches

broadcasting the subset of content to a plurality of user locations (see at least *FIG. 8*).

As per claim 21:

Youden further teaches

wherein the content distributor sends the content from a remote point with respect to the user location (see at least *FIG. 1*).

As per claim 22:

Youden further teaches

wherein the content is broadcast to a plurality of user locations, the broadcast is coextensive-in-time for the plurality of user locations, and the user location is part of the plurality of the user locations (see at least *FIG. 8*).

As per claims 23 and 24:

Youden further teaches

wherein the user location comprises a residence of the user (see at least col. 5:14-16 “*Client node 30 may comprises an individual user's TV STB, any general purposes computer, or any other entity capable of requesting and receiving video data*”).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phillip H. Nguyen whose telephone number is (571) 270-1070. The examiner can normally be reached on Monday - Thursday 10:00 AM - 3:00 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wei Y. Zhen can be reached on (571) 272-3708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PN
2/6/2009

/Wei Y Zhen/
Supervisory Patent Examiner, Art Unit 2191